

In the Matter of:

CC Docket No. 00-256

CC Docket No. 96-45

CC Docket No. 98-77

CC Docket No. 98-166

Innovative Telephone (“Innovative”) (formerly known as the Virgin Islands Telephone Corporation),¹ by its attorneys, and pursuant to Section 1.429(f) of the Commission’s Rules, hereby submits this Opposition to the Petitions for Reconsideration filed by the Rural Consumer Choice Coalition (“RCCC”) and the Competitive Universal Service Coalition (“CUSC”) in the above captioned matter on December 28, 2001.²

² The Rural Consumer Choice Coalition, Petition for Reconsideration, CC Docket No. 00-256, *et al.*, (filed Dec. 28, 2001) (“*RCCC Petition*”); Competitive Universal Service Coalition, Petition for Reconsideration, CC Docket No. 00-256, *et al.*, (filed Dec. 28, 2001) (“*CUSC Petition*”).

The RCCC proposes that the Commission establish an access rate target of \$.0095 per minute,³ and calls for the transport interconnection charge (“TIC”) costs allocated to local switching,⁴ the information surcharge⁵ and marketing costs⁶ to be shifted to the common line category. These proposals diverge from past Commission decisions in an attempt by the interexchange carriers (“IXCs”) to shift their costs to local customers or to other carriers. Moreover, RCCC’s proposal would increase the already significant pressure on common-line cost recovery from end users and the size of the universal service fund. Given these pressures and the high cost of insular and rural networks, RCCC’s proposal may ultimately force rate-of-return carriers to increase rates, endangering the comparability of rates for rural and urban consumers. As such, they are inconsistent with the competitive and universal service goals of the 1996 Act and RCCC’s Petition should be rejected.

The CUSC argues that the Commission should cap the support available through the new universal service mechanism, the Intercarrier Common Line Support (“ICLS”) fund.⁷ CUSC’s proposal is unsupported by the record and would fail to ensure that the ICLS fund is “sufficient” to accomplish to goals of universal service. CUSC’s Petition should therefore be rejected as contrary to requirements of Section 254.

³ *RCCC Petition* at 9.

⁴ *RCCC Petition* at 18.

⁵ *Id.* at 20.

⁶ *Id.* at 23.

⁷ *CUSC Petition* at 8 (citing 47 U.S.C § 254(b)(5)).

I. THE COMMISSION SHOULD MAINTAIN ITS HISTORIC APPROACH TO ACCESS CHARGE REFORM, AND REJECT THE EFFORTS OF IXCS TO SHIFT THEIR COSTS TO OTHER PARTIES.

The FCC determined in the *MAG Order*⁸ that because the residual TIC costs of rate-of-return carriers represent both traffic sensitive costs and non-traffic sensitive costs, “spreading the costs recovered through the TIC among all access categories is preferable to shifting them entirely to the common line category.”⁹ The *MAG Order* also rejected proposals to prescribe below-cost rates by establishing a mandatory access rate target of \$.00095 per minute. The Commission recognized that this access rate target is much lower than the actual traffic-sensitive costs of many rate-of-return carriers,¹⁰ which RCCC concedes may be true,¹¹ and may distort competition and violate the sufficiency requirements of the Act.¹²

Citing the *1997 Access Charge Reform Order’s*¹³ statement of “dangers to competition ... with respect to per-minute recovery of the TIC” and the Commission’s decision that it would

⁸ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order; *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Service of Local Exchange Carriers*, CC Docket Nos. 98-77, 98-166, Report and Order, FCC 01-304, ¶ 101 (rel. Nov. 8, 2001) (“*MAG Order*”).

⁹ *MAG Order* at para. 100.

¹⁰ See *MAG Order* at para. 86.

¹¹ See *RCC Petition* at 10.

¹² See *MAG Order* at para. 89.

¹³ See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982 (1997) (“*1997 Access Charge Reform Order*”).

“err, if at all, on the side of NTS recovery of [TIC] costs,”¹⁴ RCCC calls for the TIC costs allocated to local switching, the information surcharge and marketing costs to be shifted to the common line category.¹⁵ RCCC also proposes that the Commission reconsider its rejection of a target access rate and maintains that .95 cents is an appropriate access rate target, despite the inability of this amount to meet the traffic sensitive costs of many rate-of-return carriers.¹⁶

In eliminating the TIC, there is no reason to treat rate-of-return carriers differently from price cap carriers. The TIC was phased out for price cap carriers in the *1997 Access Charge Reform Order*.¹⁷ In that proceeding, the Commission did not associate the TIC costs with one particular category, but instead, spread them among all the access categories.¹⁸ Indeed, the RCCC itself recognizes that the Commission’s *MAG Order* TIC policy follows the approach used with price cap carriers in the *1997 Access Charge Reform Order*.¹⁹ Thus, the Commission’s approach to eliminating the TIC for rate-of-return carriers appropriately follows the approach used in the price cap context.

RCCC’s reliance on the Commission’s statements in the *1997 Access Charge Reform Order* is misplaced. In the discussion cited by RCCC, the Commission was not considering shifting recovery of TIC costs to the common line category, but the manner in which the residual TIC costs would be recovered from IXC’s. The Commission concluded that because “at least

¹⁴ *RCCC Petition* at 18.

¹⁵ *RCCC Petition* at 18-23.

¹⁶ *RCCC Petition* at 9.

¹⁷ See *1997 Access Charge Reform Order*, 12 FCC Rcd at 16001-02, para. 41.

¹⁸ *1997 Access Charge Reform Order*, 12 FCC Rcd at 16081, para. 229.

¹⁹ *RCCC Petition* at 18.

some amount of the residual TIC represents NTS costs,” a recovery scheme that recovered costs from IXCs through a flat charge, rather than on a per-minute basis, was appropriate.²⁰ The discussion does not support reallocating these costs so that they are borne entirely by consumers or spread to other carriers.

The *CALLS Order* also provides no support for RCCC’s proposal to move TIC costs to the common line category.²¹ As a result of the *1997 Access Charge Reform Order*, the TIC had been almost completely eliminated by the time of the *Calls Order*, because those costs shifted to the other access categories.²² RCCC notes that the *Calls Order* targeted an X-factor to reduce local switching and transport (if necessary) once the TIC and the information surcharge had been eliminated. The goal of the X-factor in the CALLS Plan, however, was simply to reduce access rates to the voluntarily negotiated target rate levels. No comparable reductions were adopted or are warranted here: the FCC expressly rejected a target access rate in the *MAG Order* because it “presents the danger of distorting competition” and may lead to “excessive universal service funding.”²³ Moreover, CALLS never required carriers to target the X-factor reduction to the residual TIC costs previously allocated to local switching. Thus the *CALLS Order* does not justify the local switching reductions RCCC proposes.

²⁰ *1997 Access Charge Reform Order*, 12 FCC Rcd at 16082-83, para. 233.

²¹ *RCCC Petition* at 18.

²² See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 13028 para. 161 (“*CALLS Order*”), *aff’d in part, rev’d in part, and remanded in part*, *Texas Office of Public Util. Counsel v. FCC*, No. 00-60434 (5th Cir., Sept. 10, 2001).

²³ *MAG Order* at para. 89.

The Commission's actions in the *CALLS Order* also do not support RCCC's proposed access rate target. The elements of CALLS cited by the RCCC are inapplicable in this context. CALLS was voluntarily negotiated by price cap carriers and IXCs.²⁴ As the Commission recognizes, there are significant differences between rate-of-return carriers and large price cap carriers: rate-of-return carriers "have fewer opportunities than price cap carriers to achieve cost savings because of their limited size, their lumpy investment patterns, and fluctuating operating expenses."²⁵ Due to these differences, "the cost of providing a local loop in a rural area may be approximately one hundred times greater than in an urban area."²⁶ Clearly, then, the *CALLS Order* cannot be viewed as useful in determining appropriate rates for smaller rate-of-return carriers.

If RCCC's proposal were adopted, many rate-of-return carriers would be unable to recover the traffic-sensitive costs above this low target rate. They may have no alternative but to raise local rates or limit service options.²⁷ The *1997 Access Charge Reform Order* recognized the need to reform access charges in a way that avoids undue disruption to service.²⁸ The Commission's decision in the *MAG Order* not to prescribe particular access rates minimizes the

²⁴ See *CALLS Order*, 15 FCC Rcd. at 12981, para. 48.

²⁵ *MAG Order* at para 86.

²⁶ *MAG Order* at para. 45 (citations omitted); see also *id.* at paras. 86, 88 (explaining why adoption of a .95-cent rate is inappropriate given the differences between low-density price cap carriers and rate-of-return carriers).

²⁷ Although purporting to be a "consumer" choice coalition, RCCC's proposal runs counter to the National Association of State Utility Consumer Advocates' ("NASUCA") warning (accepted by the FCC) that an access target rate set too low would create a barrier to entry, thereby depriving consumers of competition and the rapid deployment of technological innovations. See *MAG Order* at para 84; *NASUCA Comments* at 16-17 (noting that if IXCs do not pay for the full use of the facilities they require, they will not have an incentive to search for other avenues to reach their customer base).

²⁸ See *1997 Access Charge Reform Order*, 12 FCC Rcd at 16002, para. 46.

possibility of such a dramatic drop in revenues, and thereby avoids a “highly disruptive ”²⁹ result for rate of return carriers.

The IXC’s requests are little more than veiled attempts to reduce their costs by spreading them among a large group of other carriers. RCCC’s proposals would reduce the rates paid by IXCs, while increasing the costs allocated to local customers or, due to the subscriber line charge (“SLC”) cap, to carriers as a whole (through universal service). Such proposals are inconsistent with the competitive and universal service goals of the 1996 Act, and would result in a windfall for IXCs, ultimately at the expense of consumers.

It is clear that, despite its name, the Rural Consumer Choice Coalition³⁰ is not pursuing interests of consumers, but those of IXCs. Innovative submits that the FCC should continue to follow its own conclusions adopted in the price cap context and affirm its decision to decline to prescribe the access rates of rate-of-return carriers and to spread the costs currently recovered through the TIC and other mechanisms over all access categories.³¹

II. THE COMMISSION SHOULD CONTINUE TO ENSURE THAT UNIVERSAL SERVICE FUNDING REMAINS “SUFFICIENT” BY AGAIN DECLINING TO CAP ICLS.

The FCC should reject CUSC’s proposal to cap ICLS to ensure the sufficiency of universal service support and allow carriers to maintain affordable rates.

²⁹ See *id.*; *MAG Order* at para. 81.

³⁰ Innovative notes that the RCCC does not appear to count any *actual* consumers or consumer interest groups among its members.

³¹ See *MAG Order* at paras. 81, 100.

As the Commission has repeatedly recognized, universal service funds are particularly critical to carriers in rural, insular and high-cost regions.³² Innovative and other insular carriers currently depend on the revenues generated by universal service to maintain affordable rates in uniquely high-cost environments. The reduction in support caused by a cap on ICLS would endanger rural and insular carriers' ability to maintain affordable and reasonably comparable rates. In recognition of this fact, the Commission rejected proposals for a cap on ICLS in the *MAG Order*, finding that a cap would cause some carriers to receive less explicit support than the implicit support they now receive. The resulting reduction in revenues "might undermine our universal service goals by creating pressures . . . to reduce service quality, increase local rates, or limit service offerings."³³ The Commission also noted this decision was consistent with the MAG proposal, the Rural Task Force recommendation and other comments in the proceeding.³⁴

Citing the need to ensure the ICLS mechanism "complies with the statutory mandates that [universal service support] funding be 'specific' and 'predictable'," CUSC proposes that the Commission establish a per-carrier cap, a per-line cap set at the first year's funding amount and a national cap on the ICLS fund as a whole.³⁵ CUSC's proposal is unsupported by the record, and

³² See *MAG Order* at para. 4; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11253 para. 16 (rel. May 23, 2001); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8936, para. 294 (1997) (subsequent history omitted) ("For many rural carriers, universal service support provides a large share of the carriers' revenues, and thus, any sudden change in the support mechanism may disproportionately affect rural carriers' operations.").

³³ *MAG Order* at para. 132.

³⁴ See *id.*

³⁵ See *CUSC Petition* at 8 (citing 47 U.S.C § 254(b)(5)).

contrary to Section 254(e)'s mandate that support be "sufficient" to accomplish to goals of universal service.³⁶

The plain language of Section 254, as well as sound public policy, requires that "sufficiency" of funding outweigh speculative concerns about predictability. Section 254(e) emphasizes that such support "should be explicit and sufficient to achieve the purposes of this section."³⁷ Further, Section 254(b) itself provides that federal universal service support mechanisms should be specific, predictable, and *sufficient*.³⁸ There is no question that the universal service fund does not become unpredictable or unspecific simply because it may increase in the future. If the fund must grow to sufficiently provide consumers in rural and insular areas with quality services at just, reasonable and affordable rates, then that is what the statute requires.

CUSC never even demonstrated that the ICLS mechanism would, if fact, become unpredictable. CUSC's speculation that carriers may "gold plate" their networks should be rejected. Any goldplating concerns can be addressed through individual enforcement efforts. Rather than focus on speculation, the Commission should conclude that the move from implicit support in the CCL to the new explicit per-line ICLS mechanism itself increases the predictability and specificity of universal service.³⁹

³⁶ See 47 U.S.C. §254(e).

³⁷ 47 U.S.C. § 254(e).

³⁸ See 47 U.S.C. § 254(b).

³⁹ See *MAG Order* at para. 275.

III. CONCLUSION

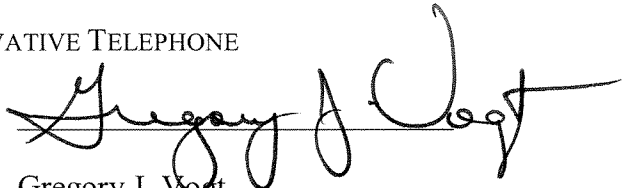
For the foregoing reasons, Innovative asks that the Petitions for Reconsideration of RCCC and CUSC be denied.

Samuel E. Ebbesen
President & Chief Executive Officer
Innovative Telephone
P.O. Box 6100
St. Thomas, USVI 00801-6100
(340) 775-8617

February 14, 2002

INNOVATIVE TELEPHONE

By:

A handwritten signature in black ink, appearing to read "Gregory J. Vogt", written over a horizontal line.

Gregory J. Vogt
Marcus E. Maher
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Its Attorneys